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6 UNITED STATES DISTRICT COURT

7 DISTRICT OF NEVADA

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9 CLINT B. MOSS,

Case No. 3:18-cv-00286-HDM-WGC

10 v. Petitioner,

ORDER

11 FILSON, et al.,

12 Respondents.

14 Petitioner Clint B. Moss has submitted a *pro se* petition for writ of habeas corpus
15 pursuant to 28 U.S.C. § 2254 and has paid the filing fee (ECF No. 1). It appears from
16 the petition that it may be subject to dismissal as time-barred.

17 The Antiterrorism and Effective Death Penalty Act (AEDPA) imposes a one-year
18 statute of limitations on the filing of federal habeas corpus petitions. 28 U.S.C. §
19 2244(d). The one-year time limitation can run from the date on which a petitioner's
20 judgment became final by conclusion of direct review, or the expiration of the time for
21 seeking direct review. 28 U.S.C. § 2244(d)(1)(A). Further, a properly filed petition for
22 state postconviction relief can toll the period of limitations. 28 U.S.C. § 2244(d)(2).

23 In his federal petition, Moss states that he wishes to challenge the judgment of
24 conviction in state case no. CR-2010-0143 (ECF No. 1, pp. 1-2). He indicates that the
25 judgment of conviction was entered on May 13, 2010, he did not file a direct appeal, and
26 he did not file his state postconviction petition for writ of habeas corpus until three years
27 later on June 5, 2013. *Id.* Moss dispatched his federal habeas petition on May 8, 2018.

1 *Id.* at 1. It appears that the AEDPA one-year limitations period expired several years
2 ago.
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4 Moss may be entitled to equitable tolling of the one-year limitations period if he
5 can establish that he diligently pursued his rights and some extraordinary circumstance
6 stood in his way. See *Calderon v. United States District Court (Beeler)*, 128 F.3d 1283,
7 1288 (9th Cir. 1997), *overruled in part on other grounds*, *Calderon v. United States*
8 *District Court (Kelly)*, 163 F.3d 530 (9th Cir. 1998); *Pace v. DiGuglielmo*, 544 U.S. 408,
9 418 (2005). The petitioner will be given the opportunity to show that either the instant
10 petition was not filed beyond the one-year statute of limitations, or that he is entitled to
equitable tolling of the time limitation.
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12 **IT IS THEREFORE ORDERED** that the Clerk shall **ELECTRONICALLY SERVE**
the petition (ECF No. 1) upon the respondents.
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14 **IT IS FURTHER ORDERED** that the Clerk shall add Adam Paul Laxalt, Nevada
Attorney General, as counsel for respondents.
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16 **IT IS FURTHER ORDERED** that petitioner shall have **thirty (30) days** from the
date of entry of this order to show cause and file such proof he may have to
17 demonstrate that the petition for writ of habeas corpus was timely filed within the one-
18 year time limitation or that he is entitled to equitable tolling of the time period. He shall
19 also set forth a complete and accurate history, with dates, of any state postconviction
20 proceedings presented to the state district court and the Nevada Supreme Court,
21 including direct appeal and state habeas petitions.
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IT IS FURTHER ORDERED that if petitioner files such proof, respondents shall have **twenty (20)** days to file any response to petitioner's proof.

IT IS FURTHER ORDERED that if petitioner is unable to demonstrate that the petition for writ of habeas corpus was filed within the limitations period or that he is entitled to equitable tolling, the court will enter an order dismissing the petition.

DATED: August 3, 2018.

Howard D McFadden

**HOWARD D. MCKIBBEN
UNITED STATES DISTRICT JUDGE**